SERVED: June 12, 1995

NTSB Order No. EA-4368

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 5th day of June, 1995

DAVID R. HINSON, Administrator, Federal Aviation Administration, Complainant, v. THOMAS A. BRZOSKA, Respondent.	Docket SE-13245

ORDER DENYING RECONSIDERATION

Respondent has petitioned for reconsideration of our opinion and order in Administrator v. Brzoska, NTSB Order No. EA-4288 (served November 18, 1994). In that decision, we affirmed the revocation of respondent's pilot certificate pursuant to section 609(c) of the Federal Aviation Act (49 U.S.C. App. 1429(c) [now recodified as 49 U.S.C. 44710(b)]) and 14 C.F.R. 67.20(a)(1), based on respondent's felony drug conviction and his failure to disclose that conviction on two applications for airman medical certification.

In his petition, respondent reiterates many of the arguments raised in his appeal brief. Specifically, respondent again asserts that: the law judge improperly revealed the testimony of prior witnesses during his questioning of some of the Administrator's witnesses; the complaint was stale, and barred by 28 U.S.C. 2462, estoppel, and laches; the law judge improperly admitted evidence regarding the use of an aircraft in connection with the offense leading to respondent's drug conviction; the

evidence did not establish that marijuana was found aboard the aircraft and, therefore, respondent could not be found to have been an airman on board a drug-running flight; revocation is barred by the FAA's subsequent issuance of additional type ratings; and the falsification charge is barred by U.S. v. Manapat, 920 F.2d 1028 (11th Cir. 1991).

We have already fully considered, and rejected, all of the issues raised in respondent's petition. Despite respondent's belief that we did not adequately consider or properly dispose of those issues in EA-4288, he has not demonstrated error in or otherwise identified a basis for altering our decision on these points.

Respondent has, however, raised an additional argument with regard to the stale complaint issue. Specifically, respondent now claims that our rejection of his argument that this case should have been dismissed under our stale complaint rule[1] is

[1] Our stale complaint rule (49 C.F.R. 821.33) provides, in pertinent part:

§ 821.33 Motion to dismiss stale complaint.

Where the complaint states allegations of offenses which occurred more than 6 months prior to the Administrator's advising respondent as to reasons for proposed action under section 609 of the Act, respondent may move to dismiss such allegations pursuant to the following provisions:

(a) In those cases where a complaint does not allege lack of qualification of the certificate holder:

(1) The Administrator shall be required to show by answer filed within 15 days of service of the motion that good cause existed for the delay, or that the imposition of a sanction is warranted in the public interest, notwithstanding the delay or the reasons therefor.

(2) If the Administrator does not establish good cause for the delay or for imposition of a sanction notwithstanding the delay, the law judge shall dismiss the stale allegations and proceed to adjudicate only the remaining portion, if any, of the complaint.

* * *

(b) In those cases where the complaint alleges lack of qualification of the certificate holder:

(1) The law judge shall first determine whether an issue of lack of qualification would be presented if any or all of the allegations, stale and timely, are assumed to be true. If not, the law judge shall proceed as in paragraph (a) of this section.

(2) If the law judge deems that an issue of lack of qualification would be presented by any or all of the

inconsistent with our recent decision in Administrator v. Elston, NTSB Order No. EA-4153 (1994). However, there is no inconsistency, as this case is not analogous to Elston in several respects.

In Elston, the Administrator sought to suspend the respondent's pilot certificate for 180 days pursuant to 14 C.F.R. 61.15(a) (based on his conviction for possession of approximately 10 ounces of marijuana), and pursuant to section 67.20(a) (based on his failure to disclose the conviction on a medical application). The Administrator filed his complaint in that case well beyond the 6-month limitation in our stale complaint rule. The only issue on appeal was whether this untimeliness could be excused by the "public interest" exception of our stale complaint rule (49 C.F.R. 821.33(a)(1)). We held that it could not, because the case did not implicate a unique or unusual overriding public interest, or involve exceptionally egregious or aggravated violations. Accordingly, we dismissed the complaint as stale.

While the complaint in this case was also filed more than 6 months after the Administrator knew of respondent's violations, the similarities between this case and Elston end there. Unlike Elston, this case was brought pursuant to section 609(c) of the Federal Aviation Act, a statute which **required** revocation of respondent's certificate, regardless of the Administrator's timing in filing the complaint. Moreover, even if our stale complaint rule did apply to this case, it would not support dismissal of the case because, as we noted in EA-4288 at 5-6, n. 10, the complaint raised a legitimate question as to respondent's qualifications to hold an airman certificate, and thus was exempt from the 6-month filing requirement. In Elston there was no allegation that the respondent lacked qualification.

In sum, respondent has established no error in our decision in EA-4288.

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's petition for reconsideration is denied.

HALL, Chairman, FRANCIS, Vice Chairman, and HAMMERSCHMIT, Member of the Board, concurred in the above order.

(..continued)

> allegations, if true, he shall proceed to a hearing on the lack of qualification issue only, and he shall so inform the parties. The respondent shall be put on notice that he is to defend against lack of qualification and not merely against a proposed remedial sanction.